

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT

CASE NO.: 4D2024-0380

L.T. NO.: CACE19-80000

ANDREW MEDINA,

Appellant(s)

v.

SAMANTHA FUENTES, et al.,

Appellee(s).

_____ /

ANSWER BRIEF OF APPELLEES

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I.
STATEMENT OF THE CASE¹

A. Nature of the Case

This is an appeal by Appellant/Defendant Andrew Medina of the trial court’s non-final order of January 9, 2024, denying his motion for summary judgment below where he asserted an entitlement to sovereign immunity under section 768.28(9)(a), Florida Statutes. (App. 3005-06).

Medina makes two arguments in this appeal. First, he argues that the trial court erred in finding that there is a genuine issue of material fact as to whether he is entitled to sovereign immunity. (Initial Br. 22-24). Second, he argues that the trial court erred in denying summary judgment in his favor on the issue of causation. (Initial Br. 24). As set forth more fully below, while this Court has

¹ References to the “Appendix” or “App.” are to the Appendix to Andrew Medina’s Initial Brief, filed June 18, 2024. References to the “Initial Brief” and “Initial Br.” are to Medina’s Initial Brief of Appellant, filed June 18, 2024. References to the “Supplemental Appendix” or “Supp. App.” are to the Supplemental Appendix of Appellees, filed together with this brief. The only item that is part of the Supplemental Appendix is the body-worn camera video of Broward Sheriff’s Office Sergeant Richard Rossman. As of this filing, there is a pending unopposed motion to submit the video under seal.

jurisdiction to consider the sovereign immunity issue at this non-final stage, *see* Fla. R. App. P. 9.130(a)(3)(F)(ii), Medina improperly seeks review of the causation issue, *see Sch. Bd. of Broward Cnty. v. City of Coral Springs*, 187 So. 3d 287, 288 n.1 (Fla. 4th DCA 2016).

B. Course of the Proceedings and Disposition Below

The Plaintiffs modeled their claim against Medina on one of two complaints – the one filed by the Estate of Meadow Pollack or the one filed by the Estate of Joaquin Oliver. (App. 5-167, 1126). Both allege that Medina acted in bad faith, with malicious purpose, and/or exhibited willful or wanton disregard for the rights and safety of the students and teachers in Building 12 at Marjory Stoneman Douglas High School on February 14, 2018. (App. 1126).

Medina and the Pollack Plaintiffs litigated Medina’s sovereign immunity defense at the pleading stage. The trial court denied Medina’s motion to dismiss. *See Medina v. Pollack*, 300 So. 3d 173, 173 (Fla. 4th DCA 2020). Medina appealed the trial court’s decision to this Court, which affirmed in a July 2020 opinion. *See id.* This Court found sufficiently alleged facts that Medina acted in a manner that exhibited willful and wanton disregard and was therefore not

immune under section 768.28(9)(a), Florida Statutes. This Court held in relevant part:

We conclude that the allegations of the complaint are sufficient to survive the motion to dismiss. In a nutshell, the complaint states that Medina observed [the shooter] exit the Uber with a rifle case. Medina knew that [the shooter] had been identified as the one person who might shoot up the school at some point. Rather than immediately call a Code Red, which would have locked down the school and prevented [the shooter]’s entry into any building, Medina radioed his friend in Building 12. His reason for not calling a Code Red was strictly personal to himself—he didn’t want to be the “guy” who might call in a “million” cops there for nothing. “Something” told him not to do it. Instead, he allowed [the shooter] to cross the campus and enter Building 12, where the carnage began. Taken together, and knowing the extreme danger [the shooter] posed, Medina’s actions, as alleged, can constitute conscious and intentional indifference to the consequences of his actions and that he knowingly and purposely failed to call the Code Red.

.....

While further fact development may ultimately convince a trier-of-fact that Medina’s actions, or lack thereof, were not wanton and willful, the allegations of the complaint are sufficient to prevent dismissal of the complaint against Medina based upon section 768.28(9), Florida Statutes.

Id. at 173-74, 176, 176-77.

On May 1, 2023, after the parties engaged in years of discovery, Medina moved for summary judgment on the same sovereign

immunity defense that this Court rejected at the pleading stage. (App. 639-60). Medina's motion also argued, albeit briefly, that there was insufficient evidence that his actions caused the Plaintiffs' damages. (App. 658). At the trial court hearing on his motion, Medina argued both the sovereign immunity and causation issues. (App. 2939-41, 2958-59).

On January 9, 2024, the trial court again rejected the sovereign immunity defense, finding that there were issues of fact as to the issues previously addressed by this Court in its July 2020 opinion. (App. 3005-06). And in denying Medina summary judgment, the trial court implicitly rejected his argument that there was no genuine issue of material fact as to the causation issue. (*Id.*). Medina now appeals the trial court's denial of his summary judgment motion. (Initial Br. 22).

II. **STATEMENT OF FACTS**

A. Medina spots the shooter

On February 14, 2018, Defendant Andrew Medina was working in his assigned role as one of several Campus Monitors at Marjory Stoneman Douglas High School. (MSD) (App. 1159, 1164). Medina's posting was near the school's main entrance, which is on the east side of the property and runs parallel to Pine Island Road. (App. 1163, 1420). Medina's responsibility was to monitor the perimeter, specifically, the eastern boundary of the school. (App. 1165). He was required to monitor traffic coming in and out of the school's east gates. (*Id.*). As MSD Principal Tyson Thompson testified, Medina was the school's "eyes and ears out there," and all "Campus Monitors know to constantly be on the lookout." (App. 1165, 1166).

At around 2:00 PM on that date, Medina was at his posted location near the school's entrance, alone, and on his golf cart. (App. 1165-66, 1502-03, 1580). He was equipped with a radio and smart phone that he used to communicate with other school personnel. (App. 1936, 2027, 2162-65). Conditions and visibility were clear; it was not raining or overcast. (Supp. App. Rossman BWC at 00:01).

Medina was the first school official to see the shooter that day. (App. 2197). Medina was in a golf cart near Pine Island Road around the administration parking lot by the school's main entrance. (App. 1580, 2197-98).

At 2:19 PM, Medina saw the shooter get dropped off by an Uber, exit the vehicle, and come onto campus through a pedestrian gate that Medina was responsible for monitoring. (App. 1577, 1580-81, 1165-66, 2197-98, Supp. App. Rossman BWC at 04:00). This was about 2 minutes and 16 seconds before the shooter entered Building 12 and 2 minutes and 38 seconds before the shooter fired his first shot. (App. 1577, 1594). Upon exiting the Uber, the shooter was about 120 yards from the east doors of Building 12. (App. 1577). This is estimated to be a walk of about 1 minute and 43 seconds or a jog of about 1 minute and 4 seconds. (*Id.*).

Medina had no difficulty identifying the vehicle from which the shooter exited. He saw that it was a goldish color, small SUV with an Uber sign in the front windshield. (App. 1974, 2011). He also had no difficulty making out what the shooter was wearing and carrying, as

well as his demeanor. On the scene, he told BSO Sergeant Richard Rossman, a responding police officer, the following:

He got dropped off by an Uber. He, he started...He walked on campus. I saw him walking on campus and with a bag, **with like a rifle bag** or something.

(Supp. App. Rossman BWC at 04:15). And later that day, he told police investigators:

White boy. He pulled out -- he pulled out. He came and he's walking head down, got a black bag in his hand here and like a backpack, burgundy shirt, black pants, hat. He's walking with a purpose.

(App. 2344-46). As we know, Medina accurately identified the bag to be a rifle bag. (App. 2202, 2216, 2228, 2372-77).

The shooter did not, as required by perimeter signage, go to the main entrance to check in as a visitor. (App. 1164). Nor did he behave like the typical student coming back to school after skipping class. According to Medina, skipping students jump the gate and walk back to class like “they ain’t got no shame.” (App. 1509). The shooter was not acting casually, which made Medina suspicious. (*Id.*).

B. Medina recognizes the shooter

Medina recognized the shooter because the shooter previously attended MSD. He handled numerous disciplinary matters involving

the shooter. (App. 2348-50, 2354). Medina and others even held a meeting the prior year where they discussed the threat posed by the shooter:

I'm telling you, I knew who the kid was. Because we had a meeting about him last year and we said **if** there's gonna be **anybody** who's gonna come to this school and **shoot this school up, it's gonna be that kid.**

(App. 2350) (emphasis added).

Medina knew that the shooter no longer attended MSD (*Id.*). He told police, "He had all this crazy stuff. So they, they got rid of him up out of the school. They withdrew him out of the school because he had issues, you know. So we – we -- All the signs were there, **so they got rid of him.**" (*Id.*) (emphasis added).² Based on the shooter's disciplinary record while attending MSD, Medina and others gave him the nickname of "Crazy Boy" or "Crazy Kid." (App. 2163, 2355, Supp. App. Rossman BWC at 04:15).

Medina claims that the evidence suggests that he did not recognize the individual as "Crazy Boy" until sometime between

² Medina's statement to police on the day of the shooting undermines the Initial Brief's claim that "Medina did not know if Cruz was even a student at the time in February 2018." (Initial Br. 9).

2:20:13 PM and 2:21:13 PM, when Medina claims his golf cart “hit[] a curb that cause[d] the individual to look back towards Medina.” (Initial Br. 14, 15). He further claims that he “initially did not recognize the individual,” and that as he “drew closer to the individual, the individual turned his head in Medina’s direction, and it was then that Medina recognized the individual as a former student.” (Initial Br. 13).

While the precise timing of the identification is in dispute, there is evidence that Medina identified the shooter as “Crazy Boy” as soon as he saw the shooter exit the Uber and walk onto campus at 2:19 PM. In his first statement to police on the day of the shooting, he stated that he realized he knew the shooter, “**When he walked on. Like, right when he walked -- when he walked on** and I saw him with the hat down” (App. 2349) (emphasis added). Moreover, as set forth above, upon seeing the shooter arrive on Pine Island Road, Medina accurately made out various features of the shooter. He correctly saw that the shooter was carrying a bag, the color of the bag, that he was carrying a backpack, that he was wearing a hat, and the color of his shirt and pants. (App. 2344-46). Medina was also able

to make out the typically small Uber sign through the windshield of the vehicle from which the shooter exited. (App. 1503, 1974). Thus, there is evidence that Medina knew that this person was the “Crazy Boy” who was kicked out of MSD upon seeing the shooter exit the Uber and walk onto campus at 2:19 PM.

Medina also claims that “[t]he length of time for these events to occur was less than 2 minutes.” (Initial Br. 14). However, as set forth above, there is evidence that these events occurred over more than two minutes, starting with Medina’s observation of the shooter at 2:19 PM and ending with the shooting commencing at 2:21:38 PM. (App. 1577, 1590, 1594).

C. Medina drives towards the shooter

The shooter immediately raised Medina’s suspicion. Upon seeing him exit the Uber, Medina drove his golf cart north towards the shooter as the shooter walked west towards Building 12 with the rifle bag in hand. (App. 1580, 2344-46).

Upon seeing the shooter, Medina notified campus monitor David Taylor via radio about a suspicious person on campus. At the scene on February 14th, he told Sergeant Rossman:

So I, I call my other security guy, that was at ... that's in the building and I told him heads up, I think somebody...somebody crazy with like a bag coming. Because the boy crazy, you already know the kid kinda crazy. So I saw him coming with a bag and I wanted my guy to be careful....

(Supp. App. Rossman BWC at 04:15). He has since repeated this account multiple times. (App. 1504, 2019, 2346).

While driving his golf cart northbound, Medina hit a curb south and near a bike rack, which was a considerable distance from Building 12 and closer to Pine Island Road than Building 12. (App. 1420, 1581, 2349, 2355). Upon Medina hitting the curb, the shooter turned his head and looked at Medina. (App. 2349). When the shooter turned back to look at Medina, it reinforced Medina's original observation, made when the shooter walked onto campus, that this was "Crazy Boy." Medina says he made eye contact with the shooter:

And ***I knew he wasn't there this year so when I saw him walk on campus*** I -- it was -- night and day for me when I saw him. Especially when I -- ***I had a feeling when I saw him and then when he looked back at me*** and I -- ***and I made eye contact with him, I said, that's him.*** That's Nick. I didn't know his name at the time but that's

–
DETECTIVE GALINDEZ: But you know –

MR. MEDINA: ***Crazy boy. That's crazy boy.***

(App. 2355). They made eye contact through a chain link fence surrounding a bike rack. (App. 1505, 1581).³

D. The shooter enters Building 12 and commits the shooting

At about 2:21:16, while Medina was in his golf cart facing north towards Building 12, he saw the shooter enter Building 12. (App. 1590, 2356-57). Medina then radioed Taylor a second time. He told Taylor that the same suspicious person he previously radioed about was now entering the building. (App. 1537-38, 2028, 2356). At 2:21:28 he began to drive south away from Building 12. (App. 1588, 1595).

³ The precise time that Medina's golf cart hit the curb is not clear given the lack of video surveillance in that area. However, the curb is several feet to the south of the bike rack, which is surrounded by a chain link fence. (App. 1581). The shooter could only hear the golf cart hit that curb *and* make eye contact with Medina if the shooter was near the bike rack when he turned to look at Medina. The bike rack is between Pine Island Road and Building 12, and closer to the roadway than the building. (App. 1120-22, 1420, 1580-81). The distance from Pine Island Road to the east doors of Building 12 is approximately 120 yards – a walk of about 1 minute and 43 seconds or a jog of about 1 minute and 4 seconds. (App. 1577). Thus, the shooter would have been more than 51 to more than 32 seconds from Building 12 at the time he was near the bike rack, depending on his pace. And that is without regard to the killer being slowed by the rifle he was carrying and the backpack he was wearing.

At 2:21:38 – soon after Medina drove away – the shooter fired the first shots towards the west in the first-floor hallway. (App. 1594). Multiple students in the hallway suffered fatal and non-fatal injuries. (App. 1595).

At 2:23:13 – while the shooter was still on the first floor of Building 12 – Medina arrived in his golf cart with Broward Sheriff's Office Deputy/MSD School Resource Officer Scot Peterson and MSD Security Specialist Kelvin Greenleaf at a spot between Buildings 7 and 8 to the south of Building 12. (App. 1609). Medina then dropped Peterson off near Building 12 and then drove off in his golf cart. (App. 1611). Meanwhile, and until 2:23:25, the shooter continued shooting at victims in the first-floor hallway. (App. 1606-07, 1612-13).

At about 2:23:36, the shooter made his way to the west end of Building 12's second floor. (App. 1615). Upon hearing gunshots from the first floor, the second-floor teachers and students concealed themselves in the classrooms and sheltered in place. (App. 228, 250). Meanwhile, the shooter walked from west to east down the second-floor hallway. (*Id.*). Various students heard the shooter make statements to the effect of “no one is here” as he walked down the

second-floor hallway. (App. 228). The shooter also quickly peered in through the windows of several second-floor classrooms but saw no targets and continued east through the second-floor hallway. (App. 229). The shooter fired multiple rounds into two second floor classrooms. (App. 1622-23). However, the second floor treated the incident like an active assailant incident, and, as a result, no one on that floor was shot. (App. 228, 229).

At about 2:23:40, the shooter made it to the east end of Building 12's third floor hallway, which was full of students. (App. 1616). He resumed shooting towards the west at 2:24:32, resulting in additional deaths and injuries. (App. 1626). The shooter proceeded towards the west doors of third floor and eventually made his way to a teacher's lounge where he fired additional shots towards a window from inside the lounge at around 2:25:35. (App. 1642). At 2:27:35, Cruz made his way from the third floor down the stairs and then exited the west end of Building 12 and ran southwest. (App. 1675, 1678). At 3:40:00, an officer located the shooter at an off-campus location and arrested him. (App. 1870).

E. Medina's training

According to Broward School Board Special Investigations Unit Detective Alfred Butler, a Code Red results in a “complete lockdown” of the school, meaning “no movement, no visibility in classrooms, no sound.” (App. 2396). Among Detective Butler’s responsibilities is training school personnel in Code Red and lockdown protocols. (App. 2386-88). Less than one month prior, in January 2018, Medina attended a faculty and staff training held by Detective Butler. (App. 1178, 2386, 2395-98, 2423-24, 2536-37). At the training, among other things, Detective Butler instructed Medina and other MSD faculty and staff as follows:

In case there was a code red, you can put as many people in that particular area that can't be seen from that front window pane because most times, and the times that we've had the incidences, if the door is not unlocked, they look, they don't see, they keep going.

(App. 2419-20). These are the classroom’s “hard corners.” (App. 2420). And although MSD’s classrooms at the time did not specifically label their respective hard corners, Detective Butler did not see the need for it because high school students would be expected to know what area of the classroom is not visible through

the front windowpanes. (App. 2419-20). Additionally, when a Code Red is called, the School Resource Officer on campus is alerted, law enforcement is summoned, and police take over the situation. (App. 1200). As Detective Butler explained:

.... [C]ode red means lockdown. It doesn't mean wait until the next guy confirm[s] it. No, it's, if you see it, you lock it down. . . . If it turns out to be something, at least we locked it down as quickly as we could, ensuring that everybody is safe as possible.

(App. 2458-59). It takes about two minutes for responding officers to arrive, and in the meantime, school personnel should be "taking cover, going into the safe area in the classroom, standing by, waiting for law enforcement to arrive." (App. 2424-25).

But Medina chose not to call the Code Red. (App. 1924). According to Medina, despite his observations that day, he did not call a Code Red to avoid the embarrassment of calling a false alarm. (App. 2352). On the day of the shooting, he told police investigators that he did not want to be "that guy" that called a false alarm:

But I wasn't going to yell a code black or code red because I didn't -- I didn't actually visualize a gun and I didn't really see the shots. So I'm not -- you know, we've been doing this training at the school, you know. Don't yell it unless you, you actually get a good visual because you go code black, they shut the whole -- you get a million -- all those

cops out there for nothing. ***Then I don't want to be the guy who calls that, you know.***

(App. 2352) (emphasis added). He said the same at his deposition:

-- having talked about a meeting that if anyone's coming onto the grounds, it's this guy who's going to shoot it up, that's on the one hand. And on the other hand is I could be wrong and cops are going to come for no reason. ***Eh, I'm going to side with not calling a code red because I don't want to be that guy that calls the cops for no reason.***

(App. 2064-65) (emphasis added). Thus, Medina said, he chose to do no more than simply tell his friend Taylor to watch out: “[S]omething inside me told me not to approach him. ... [S]omething was like, ‘just let him go, and report it, and make sure your boy [fellow campus monitor David Taylor] inside [Building 12] is good.’” (App. 2356).

This, however, was contrary to Medina’s training, which taught him to call a Code Red upon suspicion of any threat to the campus. (App. 2400-02). At the training, Detective Butler informed MSD faculty and staff, Medina included, that anyone could call a Code Red and, “if you see it, please let everyone know.” (App. 2398-99). He further explained that whoever was closest to the threat can call a Code Red and that no gun had to be visible to call a Code Red. (App. 2400). Detective Butler also stated that, even if there is not a weapon

present, that is, even if a gun or knife is not visible, “if it’s uncomfortable, you feel it, you lock it down” and call the Code Red. (*Id.*). Detective Butler also told Medina and others that they should call the Code Red even if they are unsure. (App. 2401-02).

At his deposition, Detective Butler debunked Medina’s reasons for not calling a Code Red. Detective Butler testified that he never told Medina that he should not call a Code Red unless a gun is visible. (App. 2403). According to Detective Butler, in his years of conducting these training sessions, he has never once told anyone that they must see a gun to call a Code Red. (*Id.*). And with respect to the risk of false alarms, Butler reassured staff at the training that, even after a Code Red is called, it is possible to downgrade it to a Code Yellow or Green if it turns out a full lockdown is not needed. (App. 2401-02).

Kelvin Greenleaf, MSD Security Specialist, testified about Detective Butler’s training. (App. 2535-37). He recalls that Detective Butler made it clear to everyone that anyone could call a Code Red, including the first person who witnessed the act that prompts it. (App. 2535-36). He also confirmed that you do not need to see a gun to call it, and you do not need to be 100% sure to call it. (App. 2544).

According to Mr. Greenleaf, Detective Butler never cautioned folks to be careful because you don't want to be the guy that causes police to arrive without need. (*Id.*).

MSD Assistant Principal Denise Reed corroborated the testimony of Mr. Greenleaf and Detective Butler. She testified that staff was trained to call a Code Red "if there's an intruder on campus." (App. 2653). Thus, upon seeing the shooter enter the campus with what appeared to be a rifle bag, the training required Medina to call a Code Red. (*Id.*)

III.
SUMMARY OF THE ARGUMENT

There is an issue of fact as to whether Medina is entitled to immunity. Medina saw the shooter enter campus with a rifle bag. He recognized the shooter as “Crazy Boy” and knew that he was trespassing onto campus. He saw the shooter acting suspiciously. He and other staff discussed that, if anyone was to shoot up the school, it would be this person. Medina was concerned that “Crazy Boy” presented a threat. He warned his fellow Campus Monitor David Taylor via radio. But he did not, as he was trained to do, call a Code Red on his radio to lock down Building 12 and summon police. A reasonable jury could find that Medina was not merely negligent; that he “acted in bad faith or with malicious purpose or in a manner exhibiting wanton and willful disregard of human rights, safety, or property.” Fla. Stat. § 768.28(9)(a).

Medina improperly seeks review of the issue of whether there is sufficient evidence of causation. This Court’s jurisdiction is limited to reviewing Medina’s immunity defense. It does not include other issues considered at summary judgment, such as causation. But even if it were to consider causation, the trial court should still be

affirmed. Causation is an issue traditionally left to the jury, and the evidence gives rise to a genuine issue of material fact.

IV. **ARGUMENT**

A. There is an issue of fact as to the immunity defense.

This Court has already identified the evidentiary showing that must be made to have Medina’s immunity defense tried before a jury. *See Medina*, 300 So. 3d at 173-74, 176, 176-77. It found that Medina was not entitled to dismissal on immunity grounds given the following allegations: (1) that “Medina observed [the shooter] exit the Uber with a rifle case;” (2) that “Medina knew that [the shooter] had been identified as the one person who might shoot up the school at some point” and thus presented an “extreme danger;” (3) that Medina did not “immediately call a Code Red,” (4) that Medina’s “reason for not calling a Code Red was strictly personal to himself—he didn’t want to be the ‘guy’ who might call in a ‘million’ cops there for nothing;” and (5) that Medina “allowed [the shooter] to cross the campus and enter Building 12, where the carnage began.” *Id.* Each allegation supporting this Court’s prior decision has been borne out by the evidence. The trial court’s denial of summary judgment should be affirmed.

The Initial Brief is largely an effort to reframe the evidence in a light more favorable to Medina and blunt evidence that undermines his defense. But “[c]redibility determinations, the weighing of the evidence, and the drawing of legitimate inferences from the facts are jury functions, not those of a judge, whether he is ruling on a motion for summary judgment or for a directed verdict.” *Serrano v. Dickinson*, 363 So. 3d 162, 165 (Fla. 4th DCA 2023). Summary judgment is only appropriate where “there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” *Id.* (quoting Fla. R. Civ. P. 1.510(a)). The “correct test for the existence of a genuine factual dispute is whether the evidence is such that a reasonable jury could return a verdict for the nonmoving party.” *Id.* And the evidence must be “considered in the light most favorable to the non-moving” Plaintiffs. *Fischer v. Bernard’s Surf*, 217 So. 2d 576, 577 (Fla. 4th DCA 1969).

Moreover, in “Florida, evidence of inconsistency in testimony and documentary evidence itself creates a disputed issue of fact for the jury which may not be resolved by the trial court adversely to the nonmoving party [on motion for summary judgment].” *Bogatov v. City*

of Hallandale, 192 So. 3d 600, 601-02 (Fla. 4th DCA 2016) (reversing summary judgment) (quotations omitted); *see, e.g., also, McNulty Lofts Condo. Ass’n v. WRH McNulty Garage, LLC*, 385 So. 3d 183, 187 (Fla. 2d DCA 2024) (reversing summary judgment); *Gardner v. Holifield*, 639 So. 2d 652, 657 (Fla. 1st DCA 1994) (reversing summary judgment on sovereign immunity defense).

Under these principles, the trial court did not error in finding that Medina “has not satisfied his burden to show that there is no genuine dispute as to any material fact, and thus, is not entitled to judgment as a matter of law.” (App. 1148).

1. Medina observed the shooter exit the Uber with a rifle bag.

There is evidence that “Medina observed [the shooter] exit the Uber with a rifle case.” *Medina*, 300 So. 3d at 174. Medina testified that he saw the Uber stop and the shooter exit with a black bag. (App. 1503, 2344-46). And he identified it as a rifle bag:

He got dropped off by an Uber. He, he started...He walked on campus. I saw him walking on campus and with a bag, ***with like a rifle bag or something.***

(Supp. App. Rossman BWC at 04:15). He was correct; the shooter was carrying a large black rifle bag containing a loaded AR-15 rifle.

(App. 2202, 2216, 2228, 2372-77).

Medina ignores Sergeant Rossman's BWC video, characterizing it as a "black bag" in the Initial Brief. (Initial Br. 23, 28, 29, 31, 32). Medina also remarkably claims, "At no point did Medina suspect or see that the individual was carrying an automatic rifle[.]" (*Id.* 29).

These claims are impossible to square with the fact that Medina accurately identified the bag in the shooter's hands as "**like a rifle bag.**" (Supp. App. Rossman BWC at 04:15). The Court must construe the evidence in favor of the Plaintiffs and resolve all conflicts in favor of the Plaintiffs. *See Fischer*, 217 So. 2d at 577; *Bogatov*, 192 So. 3d at 601-02. There is support for this part of the Court's prior opinion.

2. Medina knew the shooter was trespassing and identified him as the one person who might shoot up the school.

There is evidence that "Medina knew that [the shooter] had been identified as the one person who might shoot up the school at some point." *Medina*, 300 So. 3d at 176.

Medina was immediately suspicious of the shooter. (App. 2019, 2344-46). In addition to inexplicably carrying a rifle bag in broad daylight towards a classroom building, the shooter's behavior was

suspicious. He was walking “with a purpose” and did not act like a typical student skipping class. (App. 1509, 2344-46). Nor did he act like a typical visitor because he did not follow the sign to check in at the main entrance. (Ap. 1164). And Medina knew that the shooter was trespassing; he knew the shooter had been kicked out of MSD and had not attended that year due to disciplinary problems. (App. 2350, 2355).

Additionally, Medina testified that he recognized the shooter as “Crazy Boy” from when the shooter did attend MSD:

MR. MEDINA: Nikolas Cruz. I knew the kid. I couldn't -- I knew him. I saw him.

DETECTIVE DEMOSTHENES: ***When did you realize that you knew him?***

MR. MEDINA: ***When he walked on. Like, right when he walked -- when he walked on*** and I saw him with the hat down and I -- and I -- and I came in the golf cart and he was walking beeline and I got to, like, right here and he gave me the look. ***Like, he looked -- he looked back at me to see, you know, where I was there. And once he looked, I was like, bing, I knew it. Soon as I saw him, I said, that's Nick. I didn't know his name at the time.***

....

And I knew he wasn't there this year so when I saw him walk on campus I -- it was -- night and day for me when I saw him. Especially when I -- I had a feeling when I saw him and then when he looked back at me and I -- ***and I***

made eye contact with him, I said, that's him. That's Nick. I didn't know his name at the time but that's –

DETECTIVE GALINDEZ: But you know –

MR. MEDINA: **Crazy boy. That's crazy boy.**

(App. 2349, 2355). And Medina testified that he recalled a meeting the year prior where he and other MSD staff discussed that, if anyone was to shoot up the school, it would be this person:

I'm telling you, I knew who the kid was. Because we had a meeting about him last year and **we said if there's gonna be anybody who's gonna come to this school and shoot this school up, it's gonna be that kid.**

(App. 2350) (emphasis added).

This Court previously found that the Plaintiffs sufficiently alleged “that [the shooter] presented an “extreme danger.” *Medina*, 300 So. 3d at 176. All the evidence taken together – witnessing the shooter stepping onto campus with a black rifle bag (App. 2377, Supp. App. Rossman BWC at 04:15); seeing the shooter act suspiciously (App. 2019, 2344-46); knowing the shooter was trespassing and had been kicked out due to disciplinary problems (App. 2350, 2355), and recognizing the shooter as the “Crazy Boy”

who might one day shoot up the school (App. 2349, 2355) – support this allegation.

3. Rather than immediately call a Code Red, Medina radioed his friend in Building 12.

There is evidence that Medina did not “immediately call a Code Red,” but instead “radioed his friend in Building 12.” *Medina*, 300 So. 3d at 176.

A Code Red results in an immediate complete lockdown of the school to ensure safety and summoning police. (App. 2396). Detective Butler of the Broward School Board’s Special Investigations Unit testified that “code red is the most serious. It’s complete lockdown, no movement, no visibility in classrooms, no sound.” (*Id.*).

Additionally, as Medina concedes, he did not call a Code Red and instead merely radioed his friend Taylor. (Initial Br. 28-29) (App. 1503-1504, 2346). And he exchanged text messages with Taylor. (App. 2162-65). However, he never called a Code Red. (App. 1924, 2352, 2356).

From when he spotted the shooter to the time he saw the shooter enter Building 12, Medina’s communications were solely directed at Taylor. Medina notes that the communications to Taylor

were over school radio and therefore audible by others. (Initial Br. 13, 28-29). But that lacked the details needed for others to appreciate the danger that was afoot. All Medina said was that a “suspicious” person was entering with a “black bag.” (Initial Br. 29). He never said that the person was carrying what looks “like a rifle bag,” or that it was the same “Crazy Boy” that he and other security personnel agreed that if “there’s gonna be anybody who’s gonna come to this school and shoot this school up, it’s gonna be that kid.” (App. 2349-50, 2355, Supp. App. Rossman BWC at 04:15).⁴ Moreover, as set forth below, Medina’s actions were directly contrary to the training he received just a few weeks prior – which was to call a Code Red.

4. Medina’s reason for not calling a Code Red was strictly personal to himself.

As this Court previously noted, Medina’s reasons for not calling a Code Red weigh into the immunity determination:

⁴ The Initial Brief asks, “If Medina should have called a Code Red given this information, then why did no other security personnel call Code Red when they were notified of this information by Medina over the walk talkie.” (Initial Br. 31). This argument fails because it assumes that other security personnel had the same information as Medina. But they did not because Medina did not share the most alarming observations that only he could make and did make.

His reason for not calling a Code Red was strictly personal to himself—he didn’t want to be the “guy” who might call in a “million” cops there for nothing. “Something” told him not to do it.

Medina, 300 So. 3d at 176. This Court found that the allegations to this effect supported the conclusion that Medina, “knowingly and purposely failed to call the Code Red.” *Id.* The evidence supports these allegations.

Medina has twice stated he did not call a Code Red for fear that he could be that “guy” that called a false alarm. On the day of the shooting, he told police investigators the following:

But I wasn’t going to yell a code black or code red because I didn’t -- I didn't actually visualize a gun and I didn't really see the shots. So I’m not -- you know, we’ve been doing this training at the school, you know. Don't yell it unless you, you actually get a good visual because you go code black, they shut the whole -- you get a million -- all those cops out there for nothing. Then I don’t want to be the guy who calls that, you know.

(App. 2352). And he repeated this explanation at his deposition:

-- having talked about a meeting that if anyone’s coming onto the grounds, it’s this guy who’s going to shoot it up, that’s on the one hand. And on the other hand is I could be wrong and cops are going to come for no reason. Eh, I’m going to side with not calling a code red because I don't want to be that guy that calls the cops for no reason.

(App. 2064-65). Medina also testified that “something” told him not to call the Code Red. (App. 2356). This is evidence that Medina’s decision to not call the Code Red was made “knowingly and purposely.” *Medina*, 300 So. 3d at 176. The thought of calling a Code Red crossed Medina’s mind when he saw the shooter, but he consciously chose not to for personal reasons.

Medina claims that his training only required him to report the suspicious person via radio, and that he was not trained to call a Code Red in these circumstances. (Initial Br. 3, 23, 29, 30, 33). However, there is evidence that Medina’s decision to not call the Code Red contravened training that he received just a few weeks prior by Detective Butler. (App. 2395-98, 2419-20, 2458-59, 2398-99, 2423-24). At the training, Detective Butler told Medina and others, “if you see it, please let everyone know.” (App. 2398). He instructed Medina and others that if a person on campus causes you to feel “uncomfortable,” then “you lock it down” by calling a Code Red. (App. 2400). Assistant Principal Denise Reed reaffirmed this instruction. She testified that the mere presence of an intruder on campus – and particularly an intruder with what appears to be a rifle bag – is

enough to call a Code Red. (App. 2653). Moreover, Detective Butler instructed Medina and others that “you call it if you’re not sure,” which means “you don’t have to necessarily see a weapon.” (App. 2402).

Medina argues that the training required him to see a gun or hear a large boom, like a bomb, to call a Code Red. (Initial Br. 8, 36). But Detective Butler testified to the contrary. He made clear that Medina was wrong to not call a Code Red because he did not see a gun. (App. 2400). Detective Butler also reassured staff that it was acceptable to call a Code Red even if one was unsure because it could then be downgraded to a Code Yellow or Green. (App. 2401-2402, 2544, 2652-53). This was corroborated by MSD Security Specialist Kelvin Greenleaf. (App. 2544).

Medina disregarded the training, and for personal reasons, decided not to call the Code Red. As such, there is evidence disputing Medina’s claim that his “actions followed what he was trained to do[.]” (Initial Br. 30). There is more than sufficient evidence that Medina “knowingly and purposely failed to call the Code Red,” *Medina*, 300 So. 3d at 176, as he was trained to do.

5. Medina allowed the shooter to cross the campus and enter Building 12, where the carnage began.

Finally, the evidence demonstrates that Medina “allowed [the shooter] to cross the campus and enter Building 12, where the carnage began.” *Medina*, 300 So. 3d at 176.

As set forth above, there is evidence that Medina witnessed the shooter step onto campus with a black rifle bag (App. 2377, Supp. App. Rossman BWC at 04:15); saw the shooter act suspiciously (App. 2019, 2344-46); knew the shooter was trespassing and had been kicked out due to disciplinary problems (App. 2350, 2355), and recognized the shooter as the “Crazy Boy” who might one day shoot up the school (App. 2349, 2355).

Moreover, there is evidence that Medina made these observations with time to act. The evidence supports that Medina made these observations as he saw the shooter exit the Uber and enter campus, which occurred at 2:19 PM. This is 2 minutes and 16 seconds before the shooter entered Building 12 and 2 minutes and 38 seconds before the shooter fired his first shot. (App. 1577, 1594, 2197-2198). Medina watched the shooter walk approximately 120 yards to Building 12’s entrance with a rifle bag in hand and watched

him enter the building. (App. 1577). All he did was radio his friend Taylor to tell him to be careful. (App. 2346). This was directly contrary to his training, which required him to call a Code Red. (App. 2395-2403, 2533-2537, 2544, 2653). He did nothing to stop the shooter, and instead allowed him to enter Building 12 where the carnage occurred. Thus, there is evidentiary support for this aspect of the Court's prior opinion as well.

Medina turns to the MSD Commission to minimize his conduct, selectively quoting certain portions of its report where the Commission opines as to various errors by the School Board and others. (Initial Br. 34-36). But Medina has laid no predicate (either below or now) for the admissibility of the Commission's opinions cited in the Initial Brief. *Cf.* Fla. R. Civ. P. 1.510(c)(2) ("A party may object that the material cited to support or dispute a fact cannot be presented in a form that would be admissible in evidence."). As such, they should not serve as a basis to reverse the trial court's order.

Furthermore, Medina conveniently overlooks what the MSD Commission had to say about his conduct, which includes the following:

3. Campus Monitor Andrew Medina was the first school employee to observe Cruz walk onto the MSD campus. **Medina saw Cruz carrying a bag that was obviously a rifle bag**—Medina admitted on video that he recognized that the bag Cruz was carrying was a rifle bag, and Medina identified Cruz as a threat. **Medina failed to act appropriately by not calling a Code Red, and that failure allowed Cruz to enter the Building 12** without the building’s occupants being notified to implement an active assailant response (Code Red). **Further, even after hearing gunshots Medina failed to call a Code Red.** There are veracity issues with Medina’s post-incident statements regarding what he knew and what he did and did not do.

(App. 281) (emphasis added). At best, the report underscores that there are disputed issues regarding Medina’s liability, which requires affirmance. *See Bogatov*, 192 So. 3d at 601-02; *Gardner*, 639 So. 2d at 657; *McNulty Lofts*, 385 So. 3d at 187.

B. This Court lacks jurisdiction to review causation.

In addition to immunity under section 768.28(9)(a), Florida Statutes, Medina raises the issue of causation. (Initial Br. 22, 23, 37). However, this Court lacks jurisdiction to review the causation issue at this stage.

Florida Rule of Appellate Procedure 9.130 provides, in relevant part, that “[a]ppeals to the district courts of appeal of nonfinal orders are limited to those that . . . deny a motion that . . . asserts

entitlement to immunity under section 768.28(9), Florida Statutes.” Fla. R. App. P. 9.130(a)(3)(F)(ii). But the question of entitlement to immunity is separate and distinct from that of causation. When presented with an immunity issue, the “trial judge should ask whether a reasonable trier of fact could possibly conclude that the conduct was willful and wanton, or would otherwise fall within the exceptions to the statute.” *Furtado v. Yun Chung Law*, 51 So. 3d 1269, 1277 (Fla. 4th DCA 2011). Causation is not included. Medina apparently agrees that causation and immunity involve distinct questions. He presents them as two independent issues on appeal. (Initial Br. 22-23).

Even in a related appeal by co-defendant Peterson, this Court has refused to consider issues outside of immunity upon interlocutory review. *See Peterson v. Pollack*, 290 So. 3d 102, 104 (Fla. 4th DCA 2020) (upon granting motion for clarification in co-defendant Peterson’s prior appeal, remarking that “the deputy’s appeal in this case was limited to our review of the deputy’s statutory immunity argument,” so the court “**could not, and did not**, review the deputy’s other argument that he lacked any legally cognizable

duty of care”) (emphasis added); *see, e.g., also, Sch. Bd. of Broward Cnty. v. City of Coral Springs*, 187 So. 3d 287, 288 n.1 (Fla. 4th DCA 2016) (declining to consider arguments raised in motion for summary judgment that did not relate to a party’s entitlement to sovereign immunity because they were “not independently appealable” and, therefore, the court was “without jurisdiction to review them”) (citations omitted); *Mendez v. Alvarez*, --- So. 3d ---, 2024 WL 2742047, at *2 n.4 (Fla. 3d DCA May 29, 2024) (noting that the court was “without jurisdiction to address” “statute of limitations and failure to state a claim” arguments raised in a motion to dismiss that also asserted “entitlement to sovereign immunity” because such “grounds” were “beyond the scope” of “interlocutory review”).

To be sure, in 2020, Rule 9.130 was broadened. The Florida Supreme Court amended it to permit appellate courts to review denials of summary judgment on immunity defenses where the denial was based on an issue of fact. *See Fla. Highway Patrol v. Jackson*, 288 So. 3d 1179, 1184 (Fla. 2020); *In re Amendments to Fla. Rule of Appellate Procedure 9.130*, 289 So. 3d 866, 867 (Fla. 2020)

But that amendment did not alter the long-standing principle that a “party may not appeal a nonappealable ruling simply because it is contained within an order that also contains an appealable order.” *Heck v. Heck*, 714 So. 2d 1200, 1201 (Fla. 4th DCA 1998) (citing *Chesler v. Hendler*, 428 So. 2d 730, 732 (Fla. 4th DCA 1983)). Indeed, appellate courts throughout Florida have long applied this rule. *See, e.g., Saidin v. Korecki*, 202 So. 3d 468, 470 (Fla. 1st DCA 2016) (characterizing matters outside the scope of an enumerated exception as “non-appealable, non-final rulings”); *Wyndham Vacation Resorts, Inc. v. Timeshares Direct, Inc.*, 123 So. 3d 1149, 1151 n.4 (Fla. 5th DCA 2012) (refusing to consider portion of nonfinal order which did not relate to enumerated exception in Rule 9.130 because the court did not have “jurisdiction” to consider it); *Suggs v. Sw. Fla. Water Mgmt. Dist.*, 953 So. 2d 699, 700 (Fla. 5th DCA 2007) (“The procedural limitations imposed by the rules do not permit review of ‘tag along’ orders contained within reviewable non-final orders.”) (citation omitted); *RD&G Leasing, Inc. v. Stebnick*, 626 So. 2d 1002, 1003 (Fla. 3d DCA 1993) (rejecting the contention that, if a “written order contains one ruling which is subject to interlocutory appeal

under Rule 9.130, then any other ruling which is contained in the same written order ‘tags along’ and is reviewable on interlocutory appeal”).

These holdings of these cases control here. Medina improperly seeks this Court’s review of the causation issue.

C. Alternatively, if this Court were to review causation, it should affirm.

Even if the Court were to proceed to consider causation, the trial court should still be affirmed. Medina argues, “The Plaintiffs contend that Medina did not call a Code Red but what evidence exists which would show that calling a Code Red would have had any effect on the outcome.” (Initial Br. 23). This ignores numerous pieces of evidence.

As a threshold matter, “the resolution of issues of . . . causation, in the light of all the circumstances, are what jury trials, and not motions for summary judgment, are for.” *Munoz v. South Miami Hosp.*, 764 So. 2d 854, 857 (Fla. 3d DCA 2000). *See also Cheeks v. Dorsey*, 846 So. 2d 1169, 1173 (Fla. 4th DCA 2003) (proximate causation “present[s] factual questions, not appropriately disposed of by way of summary judgment”). As this Court has observed, “Circumstances under which a court may resolve proximate cause as

a matter of law are extremely limited.” *Serrano*, 363 So. 3d at 166 (reversing a grant of summary judgment in favor of defendant); *see, e.g., also, Petruska v. Smartparks-Silver Springs, Inc.*, 914 So. 2d 502, 505 (Fla. 5th DCA 2005) (“In cases where there are issues relating to the cause of the accident, the courts are even more cautious in granting summary judgment because causation is so fact-specific.”).

“The judge is free to take this matter from the fact-finder only where the facts are unequivocal, such as where the evidence supports no more than a single reasonable inference.” *Id.* (citing *McCain v. Fla. Power Corp.*, 593 So. 2d 500, 504 (Fla. 1992)). “If the evidence raises any issue of material fact, if it is conflicting, if it will permit different reasonable inferences, or if it tends to prove the issues, it should be submitted to the jury as a question of fact to be determined by it.” *Petruska*, 914 So. 2d at 505.

At a minimum, there is an issue of fact as to whether Medina’s failure to call a Code Red caused the Plaintiffs’ damages.

First, over two minutes elapsed from when Medina spotted the shooter exiting the Uber with a rifle bag in hand (2:19 PM) to when the shooter entered Building 12 (2:21:16 PM). (App. 1165-66, 1577,

1580-81, 1590, 2197-98, Supp. App. Rossman BWC at 04:00). Detective Butler testified that it takes on average two minutes for outside law enforcement to respond. (App. 2424-25). And the armed school resource officer on campus that day, Peterson, would also respond before outside law enforcement's arrival. (App. 1158, 1200). If Medina had timely called a Code Red, there was time for the armed on-campus officer and outside law enforcement to arrive and prevent or mitigate the carnage.

Medina claims, "there was about a minute and twenty-five seconds (from 2:20:13 to 2:21:38) between the time when Medina first observed and reported Cruz as a suspicious person and Cruz shooting in Building 12 for the first time." (Initial Br. 43).

But as set forth above, there is evidence to the contrary – that Medina identified the shooter as a threat when the shooter exited the Uber and stepped on campus at 2:19 PM. He told police that he realized he knew the shooter, "When he walked on, Like right when he walked -- when he walked on." (App. 2349). Other evidence corroborates that Medina identified the shooter at 2:19 PM. Upon seeing the shooter arrive, Medina accurately made out various

features of the shooter, such as the fact that he was carrying a bag, the color of the bag, that he was carrying a backpack, that he was wearing a hat, and the color of his clothes (App. 2344-46). He was even able to make out the typically small Uber sign through the windshield of the car that dropped off the shooter. (App. 1503, 1974).

Second, there is evidence that injuries and deaths could have been avoided in the intervening minutes before outside law enforcement's arrival. As Detective Butler testified, when a Code Red is called, teachers and students are to "lockdown," meaning "no movement, no visibility in classrooms, no sound." (App. 2396). They are to shelter in place and go to "that particular area that can't be seen from that front windowpane" on the classroom door. (2419).⁵ That is exactly what the second-floor teachers and students did when they heard gunfire from the first floor. Before the shooter reached the second floor, teachers and students cleared the second-floor hallway and sheltered in place. (App. 228, 250). They stayed away from the windowpanes and avoided being seen. (App. 229). The shooter

⁵ Medina is wrong that there is a "question as to what is supposed to occur when a Code Red is called." (Initial Br. 40). Detective Butler explained exactly what is to occur and trained MSD school personnel on those procedures before the incident.

quickly peered in through the windows of a few classrooms, but simply moved on and was overheard saying words to the effect of “no one is here.” (App. 228, 229). As a result, no one on the second floor was hit by a bullet. (App. 228). The second floor’s experience is evidence of the effectiveness of a Code Red. It shows that, had Medina acted timely and according to his training, injuries could have been avoided and lives could have been saved.

Medina reiterates the MSD Commission’s opinions regarding other factors that contributed to the loss. (Initial Br. 40-41). But this shows that the causation evidence “is conflicting,” and “will permit different reasonable inferences,” *Petruska*, 914 So. 2d at 505, which requires that the trial court be affirmed.

V.
CONCLUSION

For the foregoing reasons, the trial court’s order denying Medina summary judgment should be affirmed.

VI.
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via the Florida Courts E-Filing Portal on all counsel in the Service List below on this 6th day of September 2024.

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VII.
CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that this brief complies with the font requirements of Florida Rule of Appellate Procedure 9.045 and the page and word limitation and font requirements of Florida Rule of Appellate Procedure 9.210.

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